

**RECEIVED
CENTRAL FAX CENTER****NOV 7 - 2007****REMARKS**

Claims 1-52 and 66-163 are rejected in this application, and 53-65 and 164- 176 have been withdrawn from consideration. In view of the following remarks, it is respectfully submitted that all of the pending claims are allowable.

I. NONSTATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTIONS

In the Office Action, claims 1, 27, 66, 89, 115, and 141 are rejected on the grounds of nonstatutory obviousness-type double patenting as being un patentable over claim 1, 14 and 24 of U.S. Patent No. 6,719,759 to Wagner et al. ("Wagner") in view of U.S. Patent No. 5,709,686 to Talos et al. ("Talos"). These claims are also provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 23, 25, and 44 of copending U.S. Patent Application Serial No. 10/695,392 in view of Talos. In response, Applicants have filed terminal disclaimers in order to overcome rejections based on these grounds.

II. THE 35 U.S.C. § 102(b) AND THE 35 U.S.C. § 103(a) SHOULD BE WITHDRAWN

Claims 115 and 141 stand rejected under 35 U.S.C. § 102(b) as anticipated by Talos.

Applicants submit that Talos does not anticipate claims 115 or 141 because the Talos bone plate does not include an at least partially threaded hole and a non-threaded hole (substantially non-threaded in the case of claim 115). The examiner rests his argument on the illustration in Figure 5 of a hole shown without its threading. The Examiner regards the missing illustration of threading as evidence that the Talos bone plate actually includes a hole with no threading, but the more reasonable explanation for this absence is a choice of illustration exercised at the discretion of the draftsman. Since the hole that the Examiner relies on is at the periphery of the figure, the choice to not illustrate the threading there was a sound one – the reader is drawn to the more important portion of the figure. What is more, to regard any hole in Talos as lacking threading makes little sense, since the only fixation element that is to be used with the Talos bone plate is a bone screw, which can be fastened only in a threaded hole. Accordingly, withdrawal of this rejection is requested.

Claims 1-52, 66-114, 116-140, and 142-163 stand rejected under 35 U.S.C. 103(a) as

being unpatentable over Talos.

Claims 1 and 89 recite two types of holes. In contrast, Talos teaches a bone plate containing holes that are identical to each other. Therefore, Talos teaches only one type of hole. In the rejection, the Examiner points to "(Fig. 1, e.g. ref.2)" to show one hole type and "(Fig.1, another ref. 2)" to purportedly show another type, yet the Examiner does not explain how these holes differ to any extent from each other. Since at least some structural difference between holes would logically be necessary to regard them as different in type, the identical structure of holes 2 in Talos indicates that all of them are of one type. This reasoning also applies to claims 115 and 141. As for claims 27 and 66, since each of these claims recites a non-threaded hole, the reasoning applied to claims 115 and 141 applies here too.

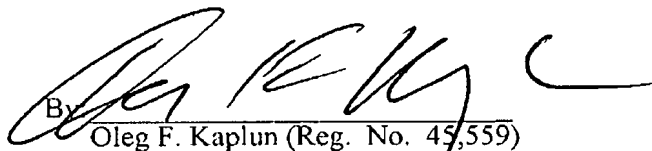
Thus, it is respectfully submitted that Talos does not describe or suggest, alone or in combination, all the elements of the current invention. It is therefore respectfully submitted that claims 1, 27, 66, 89, 115, and 141 are not anticipated and/or made obvious in view of Talos patent and that these rejections should be withdrawn. Because claims 2-26, 28-52, 65-88, 90-114, 116-140 and 142-163 depend from and, therefore, include all of the limitations of the above claims, respectfully, it is submitted that these claims are also allowable.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: November 7, 2007


By _____
Oleg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, New York 10038
Tel: (212) 619-6000
Fax: (212) 619-0276